

DAVID OPPENHEIMER and
PERFORMANCE IMPRESSIONS, LLC,

Plaintiffs,

vs.

BRIAN HOLT and
THREE OAKS GROUP,

Defendants.

VS.

The Plaintiffs, David Oppenheimer and Performance Impressions, LLC, by and through counsel, complaining of the Defendants, alleges and states that:

1. Plaintiff David Oppenheimer is a professional photographer. Mr. Oppenheimer conducts business through Plaintiff Performance Impressions, LLC. The Plaintiffs bring this action to obtain redress for Defendants' blatant and purposeful infringement of the copyright in Plaintiffs' photograph. Defendants made digital copies of an original photograph created by the Plaintiffs, without Plaintiffs' knowledge or consent, and placed the photograph on at least one commercial internet web site operated by Defendants.

2. Plaintiffs seek the damages to which they are entitled under the federal Copyright Act, 17 U.S.C. § 101, et seq., for Defendants' willful and intentional violation of Plaintiff's rights.

JURISDICTION AND VENUE

2. This case presents an actual case and controversy arising under the United States Copyright Act.

3. Original jurisdiction over this case is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this case arises under the copyright laws of the United States.

4. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1400 because Plaintiffs and Defendants reside in this District and the claims asserted herein arose in this District.

5. All conditions precedent to bringing this action have been met.

PARTIES

6. Plaintiff David Oppenheimer is a citizen and resident of Buncombe County, North Carolina.

7. The Plaintiff, Performance Impressions, LLC, is a North Carolina limited liability company doing business in Buncombe County, North Carolina, as well as other locales.

8. Upon information and belief, Defendant Brian Holt is a citizen and resident of Buncombe County, North Carolina.

9. Upon information and belief, Defendant Three Oaks Group is an unincorporated association comprised of Defendant Holt and other persons or entities whose identities are currently unknown.

FACTUAL ALLEGATIONS

10. Plaintiffs incorporate by reference and re-allege the allegations in the preceding paragraphs as if fully set forth herein.

11. David Oppenheimer is a professional photographer. He makes his living photographing and selling various scenes and events. He operates through Plaintiff Performance Impressions, LLC, and displays his work at the internet web site:

www.performanceimpressions.com.

12. In 2007, Mr. Oppenheimer took the photograph attached to this Complaint as Exhibit 1 (the "Photograph").

13. Mr. Oppenheimer then registered the Photograph with the United States Copyright Office. The Photograph was registered effective January 31, 2010. A copy of the registration is attached to this Complaint as Exhibit 2.

14. At some unknown date after registration, Defendants began displaying the Photograph on a web site they operate: www.ashevillemnative.com. Defendants continued to display the photograph on their web site until some time after July 26, 2013.

15. A copy of the web page on which the Defendants publicly displayed the Photograph is attached hereto as Exhibit 3.

16. Defendants do not, and have never had, any license, authorization, permission or consent to use the Photograph.

17. At no time did Defendants inform Plaintiffs that they intended to publicly display the Photograph.

18. At no time did Plaintiffs grant permission for Defendants to publicly display the Photograph.

19. Sometime in 2013, Plaintiffs discovered that the Defendants were displaying the Photograph on their web site.

20. On or about July 26, 2013, Plaintiffs wrote to Defendants, demanding in writing that Defendants remove the photograph from its web site.

21. Defendants ignored the demand letter, and continued to display the Photograph for some unknown period of time.

COUNT ONE: COPYRIGHT INFRINGEMENT

22. Plaintiffs incorporate by reference and re-allege the allegations in the preceding paragraphs as if fully set forth herein.

23. By publicly displaying Plaintiffs' Photograph without permission, Defendants violated the Plaintiffs' rights under the United States Copyright Act.

24. Defendants' acts of infringement are willful, intentional, purposeful, in disregard of, and done with indifference to Plaintiffs' rights.

25. Plaintiffs are entitled to Defendants' profits attributable to the infringement, pursuant to 17 U.S.C. § 504(b), including an accounting of an a constructive trust with respect to such profits.

26. Alternatively, Plaintiffs are entitled to recover their statutory damages, pursuant to 17 U.S.C. § 504(c).

27. Additionally, Plaintiffs are entitled to their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs respectfully pray this Court for relief as follows:

1. That the Plaintiffs have and recover of the Defendants the maximum compensatory damages allowed by federal law, including pre-judgment and post-judgment interest;
2. That the Plaintiffs have and recover from the Defendants, jointly and severally, the Plaintiffs' costs and attorneys' fees, pursuant to 17 U.S.C. § 505;
3. That the Plaintiffs be granted such other and further relief as this Court may deem just and proper.

Respectfully submitted, this the 12th day of August, 2014.

MEYNARDIE & NANNEY, PLLC

/s/ Robert A. Meynardie
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